

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

37CELSIUS CAPITAL PARTNERS, L.P., and 37CELSIUS CAPITAL PARTNERS, LLC,	§	
	§	
	§	
Plaintiffs,	§	Case No.
	§	
v.	§	Milwaukee County Circuit Court
	§	Case No. 19-CV-3118
INTEL CORPORATION, et al.,	§	
	§	
Defendants.	§	
	§	

NOTICE OF REMOVAL

1. Pursuant to 28 U.S.C. §§ 1332, 144, and 1446, Intel Corporation and Care Innovations, LLC hereby removes this action from the Circuit Court of Milwaukee County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

PROCEEDINGS IN STATE COURT

2. On April 19, 2019, Plaintiffs 37Celsius Capital Partners, L.P. and 37Celsius Capital Partners, LLC (“**37Celsius**”) filed suit against Intel Corporation (“**Intel**”), and Care Innovations, LLC (“**Care**,” and collectively with Intel, “**Defendants**”), in the Circuit Court for Milwaukee County, Case No. 19-CV-3118, claiming, among other things, that Defendants breached an exclusivity provision in a Term Sheet for a potential agreement for 37Celsius to acquire a controlling interest in Care. A copy of the state court Summons and Complaint is attached here as **Exhibit A**.

3. On January 24, 2020, the state court entered an order dismissing all but one of 37Celsius’ claims against Intel, and all but one of 37Celsius’ claims against Care, while granting

37Celsius leave to amend its complaint in order to add a new defendant, Care Innovations Holdings, LLC. A copy of the state court's January 24, 2020 order is attached here as **Exhibit B**.

4. On January 27, 2020, 37Celsius filed an Amended Summons and Amended Complaint, adding Care Innovations Holdings, LLC to the state court action. A copy of that Amended Summons and Amended Complaint is attached here as **Exhibit C**.

5. On February 26, 2020, in connection with a motion to dismiss Care Innovations Holdings, LLC, counsel for Care filed a certified copy of Care Innovations Holdings, LLC's Certificate of Cancellation in the state court action, demonstrating that Care Innovations Holdings, LLC, a former Delaware limited liability company, had ceased to exist in August 2017. *See* 6 Del. Code § 18-803(b) (a Delaware limited liability company can "prosecute and defend suits" only "until the filing of a certificate of cancellation"); *Metro Communication Corp. BVI v. Adv. Mobilecomm Techs. Inc.*, 854 A.2d 121, 138 (Del. Ch. 2004) ("Fidelity Brazil [a Delaware limited liability company] no longer exists – the company was dissolved, and its certificate of cancellation was filed."). A copy of the affidavit by Care's counsel, attaching the certified copy of Care Innovations Holdings, LLC's Certificate of Cancellation, is attached here as **Exhibit D**.

6. On March 20, 2020, 37Celsius informed the state court that it had no objection to the dismissal of Care Innovations Holdings, LLC from the action, based on Care Innovations Holdings, LLC's having filed a Certificate of Cancellation before the state court action commenced. A copy of the letter informing the state court of 37Celsius' non-opposition to Care Innovations Holdings, LLC's dismissal is attached here as **Exhibit E**.

7. On April 8, 2020, Care Innovations Holdings, LLC was dismissed from the state court action with prejudice. A copy of the state court's order of dismissal is attached here as **Exhibit F**.

8. Neither the Complaint nor the Amended Complaint pled facts demonstrating the plaintiffs' citizenship for diversity jurisdiction purposes. (*See* Ex. A, Compl. ¶¶ 1-2; Ex. B, Am. Compl. ¶¶ 1-2.) Therefore, on February 21, 2020, Intel served written discovery requests seeking such information from 37Celsius. (Apr. 16, 2020 Decl. of Matthew Splitek ("**Splitek Decl.**") ¶ 2 & Ex. 1.)

9. On April 1, 2020, after it requested and was granted a 10-day extension of time to compile the requested information regarding the plaintiffs' citizenship, 37Celsius responded to Intel's written discovery requests. (Splitek Decl. ¶¶ 3-4 & Ex. 2, 37Celsius Capital Partners, L.P. and 37Celsius Capital Partners, LLC, Response to Intel Corporation's First Set of Requests for Admissions and Interrogatories ("**37Celsius' Jurisdictional Discovery Responses**").

10. Based on the information contained in 37Celsius' Jurisdictional Discovery Responses, Defendants now remove this case to this Court based on diversity jurisdiction.

GROUND FOR REMOVAL

11. This action is removable pursuant to 28 U.S.C. § 1441. As set forth herein, this Court has original diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because this action is between citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

12. Minimal Diversity Requirement. Intel is a Delaware corporation with its principal place of business in California. (*See* Feb. 26, 2020, Intel Corporation's Answer to Amended Complaint, attached here as **Exhibit G**, ¶ 3; *see also* Splitek Decl. Ex. 3, Wis. Dep't of Financial

Institutions, Certified Copy of Intel's 2020 Annual Report.) Therefore, Intel is a citizen of Delaware and California.

13. Care is a Delaware limited liability company. At all times during this action, Care's sole member has been a corporation, Care Innovations, Inc. (Apr. 14, 2020 Decl. of Rhonda Holden ("Holden Decl.") ¶ 3.) Care Innovations, Inc. is a Delaware corporation that, at all times during this action, has had its principal place of business in California. (*Id.* ¶¶ 4-5.) Therefore, Care is a citizen of Delaware and California.

14. 37Celsius Capital Partners L.P. is not a citizen of either Delaware or California. (Splitek Decl. Ex. 2, Resp. to Ints. 1-3.)

15. 37Celsius Capital Partners L.P. is a Delaware limited partnership. At all times during this action, 37Celsius Capital Partners, L.P. has had two partners: 37Celsius Capital Partners GP, LLC and Alexander Kempe. (Splitek Decl. Ex. 2, Resp. to Reqs. for Adm. 1, 3, 5, 7 and Ints. 2-3.) At all times during this action, 37Celsius Capital Partners, GP, LLC's sole member has been Alexander Kempe, who is domiciled in Wisconsin. (*Id.*) Therefore, 37Celsius Capital Partners, L.P. is a citizen of Wisconsin. *See Edgewood Manor Apartment Homes LLC v. RSUI Indem. Co.*, No. 08-C-0920, 2010 WL 2430996, at *1 (E.D. Wis. June 14, 2010) ("LLCs and LPs are not treated like corporations for diversity jurisdiction purposes. Instead, the citizenship of an LLC is the citizenship of its members and the citizenship of an LP is the citizenship of its partners, general and limited. . . . If the members of an LLC or partners of an LP have members, the citizenship of all of those members or partners must be set forth as well.").

16. 37Celsius Capital Partners, LLC also is not a citizen of either Delaware or California. (Splitek Decl. Ex. 2, Resp. to Ints. 1-3.)

17. 37Celsius Capital Partners, LLC is a Delaware limited liability company. (Splitek Decl. Ex. 2, Resp. to Reqs. for Adm. 2, 4, 6, 8 and Ints. 2-3.) At all times during this action, 37Celsius Capital Partners, LLC's sole member has been Alexander Kempe, who is domiciled in Wisconsin. (*Id.*) Therefore, 37Celsius Capital Partners, LLC is a citizen of Wisconsin.

18. Consequently, complete diversity exists between the parties. Plaintiffs 37Celsius Capital Partners, L.P. and 37Celsius Capital Partners, LLC are citizens of Wisconsin. Defendants Intel and Care are citizens of Delaware and California.

19. Amount in Controversy Requirement. The amount in controversy in this action exceeds the sum or value of \$75,000, exclusive of interests and costs. The state court complaint alleges that Defendants are liable for "compensatory damages in excess of \$6 million." (Ex. A, Compl. at 12, WHEREFORE clause, ¶ A; Ex. B, Am. Compl. at 13, WHEREFORE clause, ¶ A.) Although Defendants deny that 37Celsius is entitled to any damages at all, the amount that 37Celsius seeks is significantly in excess of \$75,000.

PROCEDURAL REQUIREMENTS

20. Timeliness of Removal. This Notice of Removal is timely because it is being filed within 30 days of Defendants' receiving 37Celsius' Jurisdictional Discovery Responses, from which Defendants first ascertained that the case is one which is removable, and because it has been less than one year since the commencement of the action. 28 U.S.C. §§ 1446(b)(3) & (c)(1). Defendants received 37Celsius' Jurisdictional Discovery Responses on April 1, 2020. (Splitek Decl. ¶ 4.) Prior to receipt of 37Celsius's Jurisdictional Discovery Responses, Defendants lacked information sufficient to determine the identity and citizenship of all natural persons or incorporated entities directly or indirectly holding partnership or membership interests in 37Celsius Capital Partners, L.P. and 37Celsius Capital Partners, LLC. (*Id.* ¶ 5.) Thus they

also lacked information sufficient to determine the plaintiffs' citizenship for diversity jurisdiction purposes.

21. Although 37Celsius' Jurisdictional Discovery Responses assert that "information necessary to determine the citizenship of the Plaintiffs was disclosed in February of 2017," they do not identify what alleged "information" 37Celsius is referring to, nor when or to whom that unidentified information was purportedly disclosed. (Splitek Decl. Ex. 2, Resp. to Ints. 1-3.) In any event, 37Celsius' Jurisdictional Discovery Responses do not assert that 37Celsius previously had disclosed information sufficient to determine the plaintiffs' citizenship as of the April 19, 2019 filing date of this action, or that the state court Complaint or Amended Complaint revealed this action to be removable, or that any other paper filed or served in this action before 37Celsius' Jurisdictional Discovery Responses permitted Defendants to ascertain that the case was removable. *See* 28 U.S.C. § 1446(b)(3) ("[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable."); *Walker v. Trailer Transit, Inc.*, 727 F.3d 819, 823-24 (7th Cir. 2013) ("[T]he 30-day time limit under § 1446(b)(3) is triggered . . . *only* by the defendant's receipt of a pleading or other litigation paper facially revealing that the grounds for removal are present." (emphasis in original)); *Eberle v. Overdrive, Inc.*, 19-CV-466-JDP, 2019 WL 4727777, at *2 (W.D. Wis. Sept. 27, 2019) (action timely removed within 30 days after the plaintiff served affidavit disclosing facts about his citizenship not set forth in his complaint).

22. Removal to Proper Court. This Court is the appropriate court to which this action must be removed because it is part of the district and division within which this action is pending, namely Milwaukee County, Wisconsin. 28 U.S.C. §§ 1441(a), 1446(a).

23. Filing and Service. As required by 28 U.S.C. §1446(d), a copy of this Notice of Removal will be contemporaneously filed in the Milwaukee County Circuit Court and served on all counsel of record.

24. Process, Pleadings, and Orders. To comply with 28 U.S.C. § 1446(a), and to facilitate the proceedings in this Court, Defendants are contemporaneously filing an unabridged, chronological compendium of all documents filed in the state court action from its inception through the present. (*See* Apr. 16, 2020 Unabridged Compendium of State Court Filings (compiling docket entries 1-55)); *see also* 28 U.S.C. § 1446(a) (notice of removal shall be filed “together with a copy of all process, pleadings, and orders served upon [the removing] defendants in [the removed] action”); *Fed. Deposit Ins. Corp. v. Old Republic Ins. Co.*, 17-CV-734-JPS, 2018 WL 4639280, at *2 (E.D. Wis. Sept. 27, 2018) (“proceeding on abridged records [in a removed action] is certainly not the Court’s preferred method”).

25. Consent. Intel and Care both join this notice of removal and consent to the removal of this action to the Eastern District of Wisconsin.

26. Defendants reserve all rights and defenses, including without limitation those rights and defenses under Fed. R. Civ. P. 12.

Dated: April 16, 2020

QUARLES & BRADY LLP

/s/ Matthew Splitek

Matthew J. Splitek, Bar No. 1045592

E-mail: matthew.splitek@quarles.com

Brandon M. Krajewski, Bar No. 1090077

E-mail: brandon.krajewski@quarles.com
QUARLES & BRADY LLP
411 East Wisconsin Avenue, Suite 2350
Milwaukee, WI 53202
Telephone: (414) 277-5000
Facsimile: (414) 271-3552

*Attorneys for Intel Corporation and Care
Innovations, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2020, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: April 16, 2020.

/s/ Matthew Splitek